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10 UNITED STATES OF AMERICA

11 UNITED STATES DISTRICT COURT

12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 UNITED STATES OF AMERICA,

14 Plaintiff,

15 v.

16 MITCHELL VAUGHN LEE,

17 Defendant.  
18

No. CR 22-230-JFW

GOVERNMENT'S SENTENCING POSITION

Hearing Date: March 25, 2024

Hearing Time: 8:00 a.m.

Location: Courtroom of the  
Hon. John F. Walter

19  
20 Plaintiff United States of America, by and through its counsel  
21 of record, the United States Attorney for the Central District of  
22 California and Assistant United States Attorneys Kedar S. Bhatia and  
23 Sarah E. Spielberger, hereby files its sentencing position regarding  
24 defendant Mitchell Vaughn Lee.

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1       The government's sentencing position is based upon the attached  
2 memorandum of points and authorities, the files and records in this  
3 case, the Presentence Investigation Report and Sentencing  
4 Recommendation, and any other evidence or argument that the Court may  
5 permit.

6       Dated: March 7, 2024

Respectfully submitted,

7       E. MARTIN ESTRADA  
8       United States Attorney

9       MACK E. JENKINS  
10      Assistant United States Attorney  
11      Chief, Criminal Division

12      /s/  
13      \_\_\_\_\_  
14      KEDAR S. BHATIA  
15      SARAH E. SPIELBERGER  
16      Assistant United States Attorneys

17      Attorneys for Plaintiff  
18      UNITED STATES OF AMERICA  
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**MEMORANDUM OF POINTS AND AUTHORITIES****I. INTRODUCTION**

Defendant Mitchell Vaughn Lee already had eight separate felony convictions when, in May 2022, officers found him with a loaded firearm inside his apartment. Defendant was detained pending trial until he successfully moved the magistrate court to release him on strict bail conditions to allow him to get medical treatment. Rather than follow those conditions and get the medical treatment he requested, defendant instead absconded for nearly a year. He was eventually found and arrested on the other side of the country in Miami Beach, Florida. Three months after being arrested, defendant pleaded guilty to one count of unlawful possession of a firearm and ammunition.

For his conduct, the government recommends the Court impose a sentence of 86 months in custody, which is at the approximate midpoint of the Guidelines range, to be followed by a three-year period of supervised release. Such a sentence is sufficient, but not greater than necessary, to punish defendant's wrongful conduct and offer general and specific deterrence.

**II. STATEMENT OF FACTS****A. Officers Recover a Stolen Firearm and Ammunition in Defendant's Apartment**

On May 2, 2022, agents with the FBI executed search warrants at defendant's apartment in Los Angeles, California based on probable cause that he was conducting a royalty fraud scheme in the Western District of Texas. See Presentence Investigation Report, dated February 20, 2024 ("PSR"), Dkt. 130, ¶ 19; see generally Plea Agreement, Dkt. 120, ¶ 11. When agents were inside defendant's

1 apartment executing the warrants, they saw an empty gun holster in  
2 plain view. PSR ¶ 20. An officer asked defendant where his gun was  
3 located, and he responded that it was under the bed. Id. Under the  
4 bed, officers found the gun, which was loaded with eight rounds of  
5 ammunition. Id.; Plea Agreement ¶ 11. Later, while continuing the  
6 search, officers found three rounds of ammunition in a safe inside  
7 the apartment. PSR ¶ 21; Plea Agreement ¶ 11. The firearm and  
8 ammunition found in the apartment are depicted below:



19 Through a records check, law enforcement officers later learned  
20 that firearm had been reported stolen in Houston, Texas, in August  
21 2019. PSR ¶¶ 20, 33.

22 **B. Defendant Absconds for Over a Year**

23 Defendant was charged that same day with unlawful possession of  
24 the firearm and ammunition. Complaint, Dkt. 1. At his initial  
25 appearance, the magistrate judge ordered him detained. Minutes, Dkt.  
26 8.

27 Later that year, in September 2022, when trial was two months  
28 away, defendant moved for reconsideration of the initial detention

1 decision, arguing that he should be released on bail conditions. Dkt.  
2 30. He argued that bail was necessary to allow him to get a  
3 particular treatment for an urgent and critical medical condition,  
4 notwithstanding his substantial criminal history and the dangerous  
5 offense he committed. Motion for Reconsideration, Dkt. 34. On  
6 September 26, 2022, Magistrate Judge Jean P. Rosenbluth granted the  
7 defendant's motion and ordered him released on strict bond conditions  
8 that would allow him to get medical treatment. Minutes, Dkt. 42. One  
9 of the conditions imposed was that defendant return to the custody of  
10 the Bureau of Prisons by January 24, 2023. Id.

11 While released from custody, defendant stopped communicating  
12 with the United States Probation and Pretrial Services Office  
13 ("USPO") altogether, absconded, and became a fugitive from  
14 prosecution. Dkt. 84 at 4; PSR ¶ 24. On December 8, 2022, the USPO  
15 informed the Court that defendant's current whereabouts were unknown  
16 and recommended the Court issue a warrant for defendant's arrest.  
17 Dkt. 84 at 4. The Court issued the arrest warrant the next day. Id.  
18 Defendant did not surrender to the Bureau of Prisons by January 24,  
19 2023, as required under his bond conditions. Id.; PSR ¶ 24.

20 **C. Defendant is Charged in the Western District of Texas for**  
21 **Operating a Royalty Fraud Scheme**

22 While defendant was a fugitive, he was charged in the U.S.  
23 District Court for the Western District of Texas for his role in the  
24 royalty fraud scheme that was the basis of the prior warrant.  
25 Specifically, on May 22, 2023, Lee was charged in a sealed complaint  
26 with one count of wire fraud, in violation of 18 U.S.C. § 1343, and  
27 one count of fraud in connection with identification documents, in  
28 violation of 18 U.S.C. § 1028. United States v. Lee, 23-cr-197-DC

(W.D. Tex.), Dkt. 1. The conduct in that case is based on defendant acquiring the personal identifying information of various victims, gaining access to their accounts through support call centers, and then impersonating those victims to reroute oil and gas royalty payments to his own bank account. PSR ¶ 65. On November 15, 2023, a grand jury in the Western District of Texas returned an Indictment charging him with two counts of wire fraud, in violation of 18 U.S.C. § 1343. United States v. Lee, 23-cr-197-DC (W.D. Tex.), ECF 7 (providing factual detail on the charged fraud). That case is currently pending.

### **III. GUILTY PLEA AND PRESENTENCE REPORT**

On October 4, 2023, law enforcement arrested defendant in Miami Beach, Florida. He was ordered detained there, and had his initial appearance in this Court on November 1, 2023, where he was again ordered detained. Trial was scheduled for January 15, 2024. Dkt. 100.

On January 2, 2024, two weeks before trial, defendant pleaded guilty to the lone count in the Indictment, unlawfully possessing a firearm and ammunition, in violation of 18 U.S.C. § 922(g)(1), pursuant to the Plea Agreement. Dkt. 124. In the Plea Agreement, defendant agreed to forfeit the firearm and ten rounds of ammunition. Plea Agreement ¶ 3. On January 18, 2024, the government filed a Preliminary Order of Forfeiture. Dkt. 126; see also Dkt. 125 (application for preliminary order of forfeiture). The Plea Agreement is conditional in that it allows defendant to appeal adverse decisions from this Court denying his Motion to Dismiss (Dkt. 110) and partially denying his Motion to Suppress (Dkt. 107). Plea Agreement ¶ 4.

On February 20, 2024, USPO released the PSR. In the PSR, the USPO calculated defendant's offense level as 21, based on the following calculation:

Base Offense Level:	20	U.S.S.G. §§ 2K2.1, 4B1.2(a)
Stolen Firearm:	+2	U.S.S.G. § 2K2.1(b)(4)(A)
Obstruction of Justice:	+2	U.S.S.G. § 3C1.1, n. 4
Acceptance of Responsibility:	-3	U.S.S.G. § 3E1.1(b)

PSR §§ 28-43.

Because the defendant has eight criminal history points and is in Criminal History Category IV, a total offense level of 21 results in a recommended sentencing range of 57 to 71 months' imprisonment. Id. § 137; U.S.S.G., Part 5A. The USPO recommends a sentence of 60 months' imprisonment to be followed by three years' supervised release. See Probation Recommendation Letter, Dkt. 129, at 2.

#### **IV. GUIDELINES CALCULATION**

The government concurs in the USPO's view that defendant should receive a two-level enhancement for obstruction of justice pursuant to U.S.S.G. § 3C1.1. See PSR §§ 36-38. The government, however, objects to the USPO's view that, notwithstanding the defendant's wanton obstruction of justice, he should also receive a three-level reduction for acceptance of responsibility. PSR §§ 41-43, 137. For the reasons set forth below, the government submits that the total offense level is 24, which, at Criminal History Category IV, results in a Guidelines range of 77 to 96 months' imprisonment.

##### **A. Obstruction of Justice**

Guidelines section 3C1.1 provides for a two-level enhancement where "the defendant willfully obstructed or impeded, or attempted to obstruct or impede, the administration of justice with respect to



1 the . . . prosecution . . . of the instant offense of conviction,  
2 and . . . the obstructive conduct related to . . . the defendant's  
3 offense of conviction . . . ." Application Note 4(E) of the same  
4 Guidelines section provides a non-exhaustive list of examples of  
5 covered conduct, specifically including "escaping or attempting to  
6 escape from custody before trial or sentencing; or willfully failing  
7 to appear, as ordered, for a judicial proceeding."

8 Defendant certainly obstructed justice. Defendant secured bail  
9 pending trial by claiming that it was necessary for him to receive  
10 medical treatment. PSR ¶ 10. As his surrender date approached, he  
11 stopped communicating with the USPO, and he ultimately did not  
12 surrender as ordered by Judge Rosenbluth. Id. ¶ 24; Dkt. 84 at 4.  
13 Defendant's conduct quite literally obstructed the prosecution of his  
14 matter, as defined by U.S.S.G. § 3C1.1, as the case could not proceed  
15 for almost a year while he was a fugitive. Defendant's obstruction  
16 reflects a meaningful and deliberate attempt to evade prosecution and  
17 thwart the ends of the criminal justice system. Pretrial flight  
18 deprives the public of finality and wastes judicial and law  
19 enforcement resources. Predictably, courts have applied the  
20 obstruction enhancement for other defendants who similarly fled  
21 before trial. See, e.g., United States v. Taddy, 70 Fed. App'x 962,  
22 963 (9th Cir. 2003) (citing United States v. Draper, 996 F.2d 982  
23 (9th Cir. 1993)); United States v. Shockey, 46 F.3d 1148 (Table),  
24 1995 WL 23619, at \*1 (9th Cir. 1995) (unpublished).

25 Accordingly, the defendant should receive a two-level  
26 enhancement for obstruction of justice.  
27  
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1           **B.     Acceptance of Responsibility**

2           Because defendant obstructed the prosecution of this matter, he  
3 should not receive a two- or three-level reduction for acceptance of  
4 responsibility under U.S.S.G. § 3E1.1.

5           U.S.S.G. § 3E1.1(a) provides a two-level reduction "[i]f the  
6 defendant clearly demonstrates acceptance of responsibility for his  
7 offense." If a defendant qualifies for that reduction, he may also  
8 qualify for a reduction under U.S.S.G. § 3E1.1(b) "upon motion of the  
9 government stating that the defendant has assisted authorities in the  
10 investigation or prosecution of his own misconduct by timely  
11 notifying authorities of his intention to enter a plea of  
12 guilty . . . ."

13           Application Note 4 to U.S.S.G. § 3E1.1 provides that "[c]onduct  
14 resulting in an enhancement under § 3C1.1 (Obstructing or Impeding  
15 the Administration of Justice) ordinarily indicates that the  
16 defendant has not accepted responsibility for his criminal conduct.  
17 There may, however, be extraordinary cases in which adjustments under  
18 both §§ 3C1.1 and 3E1.1 may apply." Id. An "extraordinary case" is  
19 one in which "the defendant's obstructive conduct is not inconsistent  
20 with the defendant's acceptance of responsibility." United States v.  
21 Hopper, 27 F.3d 378, 383 (9th Cir. 1994). Such cases "arise when a  
22 defendant, although initially attempting to conceal the crime,  
23 eventually accepts responsibility for the crime and abandons all  
24 attempts to obstruct justice," such as where a defendant tells an  
25 accomplice to destroy evidence and then the defendant later confesses  
26 and tells the accomplice not to destroy evidence. Id. at 383  
27 (referencing United States v. Lallemand, 989 F.2d 936, 937-38 (7th  
28 Cir. 1993)).

1 Here, by absconding before trial for over a year, defendant took  
2 extraordinary steps to avoid accepting responsibility. Only after  
3 being arrested in Florida, detained, and on the eve of trial did he  
4 plead guilty. Defendant has not "clearly demonstrate[ed]" an  
5 acceptance of responsibility for his actions. His conduct falls  
6 squarely within the obstructive conduct that warrants an enhancement  
7 under U.S.S.G. § 3C1.1, which precludes a reduction for acceptance of  
8 responsibility absent "extraordinary" circumstances. No such  
9 extraordinary circumstances exist. The defendant did not have a  
10 sudden change of heart or reverse the obstructive conduct he put into  
11 motion. See Hopper, 27 F.3d at 383. He did not turn himself in and  
12 confess, but rather admitted guilt only after he was apprehended  
13 almost a year later on the other side of the country following the  
14 issuance of an arrest warrant. Courts have consistently held that  
15 defendants fleeing under similar circumstances are not entitled to a  
16 points-reduction for acceptance of responsibility. See, e.g., United  
17 States v. Schwindt, 378 Fed. App'x 721, 724 (9th Cir. 2010); United  
18 States v. Reed, 52 Fed. App'x 17, 18 (9th Cir. 2002); United States  
19 v. Thompson, 80 F.3d 368, 371 (9th Cir. 1996). To the extent the  
20 defendant claims that pleading guilty after being re-arrested should  
21 entitle him to acceptance points, he fails to show anything  
22 "extraordinary" about that behavior.

23 Accordingly, the Court should decline to apply the three-level  
24 reduction in the offense level under U.S.S.G. § 3E1.1.

### 25 **C. Guidelines Calculation**

26 If the Court adopts the government's position regarding  
27 acceptance of responsibility and accepts the remainder of the  
28 Guidelines calculation in the PSR, the total offense level will be

24.<sup>1</sup> At Criminal History Category IV, the resulting Guidelines recommended term of imprisonment is 77 to 96 months' imprisonment. U.S.S.G., Part 5A.

## **V. SENTENCING RECOMMENDATION**

### **A. Applicable Law**

The Court must impose a sentence that is sufficient, but not greater than necessary, to achieve the purposes set forth in 18 U.S.C. § 3553(a). The Court shall consider "the nature and circumstances of the offense and the history and characteristics of the defendant." 18 U.S.C. § 3553(a)(1). In addition, the Court should fashion a sentence that reflects the seriousness of the offense, promotes respect for the rule of law, provides just punishment for the offense, affords adequate deterrence to criminal conduct, and protects the public from future crimes of the defendant, among other considerations. 18 U.S.C. § 3553(a)(2).

### **B. The Court Should Impose a Mid-Point Guidelines Sentence**

The government respectfully submits that a sentence at the mid-point of the correct Guidelines range, 86 months' imprisonment, is appropriate. Such a sentence is warranted due to the nature and circumstances of the offense, the need to provide just punishment, the history and characteristics of the defendant, and the need for specific and general deterrence.

First, the nature of the offense and seriousness of defendant's conduct demands a substantial term of imprisonment. The bare offense

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<sup>1</sup> The government also agrees with the USPO's conclusion that the enhancement for a stolen firearm applies in this case. See PSR ¶ 33; U.S.S.G. § 2K2.1(b)(4)(A). A police report shows that the firearm in question was stolen during a vehicle burglary in Houston, Texas, in 2019. See PSR ¶ 20; see also Declaration of Kedar S. Bhatia & Exh. A (police report); Id., Exh. B (trace report).

1 of unlawfully possessing a firearm is serious and worthy of a  
2 meaningful sentence. But other circumstances make defendant's crime  
3 even more serious. Defendant's firearm was loaded, and he had a  
4 holster in plain view and ammunition stored in nearby safe. The  
5 firearm itself was stolen. Even worse, he unlawfully possessed the  
6 firearm and ammunition while he was embroiled in a separate  
7 interstate fraud scheme for which he was later indicted. These facts  
8 all increase the seriousness of the offense and, together, warrant a  
9 substantial term of imprisonment.

10 Second, defendant's significant criminal history and flight from  
11 prosecution show that an 86-month sentence is necessary to deter him  
12 from future criminality. Defendant's criminal history goes back  
13 twenty years and includes eight felony convictions and at least six  
14 misdemeanor convictions. PSR ¶¶ 48-61. Defendant's crimes have become  
15 increasingly serious, with a 2016 conviction for assaulting a store  
16 employee as he was caught stealing goods, for which he served one  
17 year in jail, his 2022 arrest for the instant unlawful firearms and  
18 ammunition possession, and his 2023 federal indictment for the  
19 royalty fraud scheme. Id. ¶¶ 61, 65. Shorter terms of incarceration  
20 have not deterred defendant - he served 16 months' incarceration in  
21 2004 for burglary nevertheless proceeded to suffer six subsequent  
22 felony convictions. Even defendant's arrest in this case did not  
23 deter his brazen flight from prosecution. A substantial term of  
24 imprisonment is necessary to prevent defendant from committing other  
25 crimes endangering the community.

26 Third, an 86-month sentence is necessary to afford adequate  
27 deterrence to others in the community who may unlawfully possess and  
28 use firearms and to promote respect for the law. There can be no

1 stronger need for general deterrence than to send the message that  
2 unlawful possession of firearms and ammunition in Los Angeles will  
3 not be tolerated. Section 3553(a)(2) calls for this Court to consider  
4 in shaping a sentence the need "to promote respect for the law" and  
5 "to afford adequate deterrence to criminal conduct." These factors  
6 weigh strongly in favor of a significant term of imprisonment.

7 A lesser term of imprisonment would not meet the ends of  
8 sentencing. The defendant has shown his true colors time and again  
9 through his earlier crimes like burglary, assault by means likely to  
10 produce great bodily injury, and drug trafficking. He is facing  
11 prosecution in another federal district for a sophisticated fraud  
12 scheme. The defendant's crimes have escalated, and he has shown no  
13 sign of stopping.

14 To the extent the defendant seeks leniency due to medical  
15 reasons, that plea rings hollow. He already once exploited his  
16 medical condition to get leniency from the Court, and he seriously  
17 abused that trust. His medical conditions do nothing to mitigate his  
18 culpability, nor did they prevent him from fleeing across the country  
19 for over a year. Moreover, defendant cannot show that the BOP is  
20 unable to treat defendant's medical conditions. Ultimately,  
21 defendant's medical issues do not warrant significant leniency and do  
22 not outweigh the meaningful aggravating circumstances described  
23 above.

24 Balancing the § 3553(a) factors, the government submits that a  
25 sentence of 86 months' imprisonment - which is just below the mid-  
26 point of the applicable Guidelines range - is sufficient but not  
27 greater than necessary.  
28

1        Given the defendant's substantial criminal history, the  
2 government submits that a three-year term of supervised release is  
3 appropriate. The defendant has shown through his own conduct that he  
4 will return to crime. Supervised release will give him the  
5 appropriate support to avoid crime and the appropriate penalties  
6 should he breach the court's trust. The government also asks that the  
7 Court enter the Preliminary Order of Forfeiture as a Final Order of  
8 Forfeiture at sentencing.

9 **VI. CONCLUSION**

10        For the foregoing reasons, the government respectfully  
11 recommends that the Court sentence defendant to a mid-point  
12 Guidelines term of 86 months' imprisonment, a three-year term of  
13 supervised release, forfeiture as set forth in the Preliminary Order  
14 of Forfeiture, and the mandatory \$100 special assessment.  
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DECLARATION OF KEDAR S. BHATIA

I, Kedar S. Bhatia, declare as follows:

1. I am an Assistant United States Attorney in the United States Attorney's Office for the Central District of California. I am one of the attorneys responsible for prosecuting the matter of United States v. Mitchell Vaughn Lee, No. 2:23-cr-230-JFW.

2. Attached hereto as Exhibit A is a trace report from the Bureau of Alcohol, Tobacco, Firearms, and Explosives for a Glock 23 with serial number BKWM339 (the "Trace Report"), which is the firearm referenced in the Indictment in this matter and recovered from defendant's apartment on May 12, 2022. As reflected in the report, the firearm was purchased by "J [REDACTED] T [REDACTED] D [REDACTED]," with address "[REDACTED] HOUSTON, TX 77065" and Texas Driver's License [REDACTED]. The firearm was sold to D [REDACTED] on June 24, 2019.

3. Attached hereto as Exhibit B is a report by the Harris County Constable's Office regarding two stolen firearms (the "Harris County Report"), including a Glock 23 with serial number BKM339. The victim-complainant who reported the firearm missing was "[REDACTED] [REDACTED]" with home address "[REDACTED] Houston, TX 77065" and Texas Driver's License [REDACTED]. The firearm was reported stolen in a vehicle burglary on August 18, 2019.

4. Although there are minor differences in the two reports - such as a serial number with one different digit, a misspelling of the purchaser's first name in the Trace Report, and dates of birth several days apart - both documents list the purchaser and victim-complainant as the same person, with the same home address and driver's license number. The firearms are also reported nearly identically, with only one digit missing in the Harris County Report,



1 which was made after the firearm was stolen. The Trace Report lists  
2 D [REDACTED] as the person to whom the firearm was sold, and Lee as the  
3 person from whom the firearm was recovered. Accordingly, the  
4 government submits that the firearm referenced in the Indictment and  
5 in the Trace Report was reported stolen, as reflected in the Harris  
6 County Report.

7 I declare under penalty of perjury under the laws of the United  
8 States of America that the foregoing is true and correct and that  
9 this declaration is executed at Los Angeles, California, on March 7,  
10 2024.

11  
12 /s/  
13 KEDAR S. BHATIA  
14 Assistant United States Attorney  
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